Supreme Court, U.S.
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No. 90-1611

In The

Supreme Court of the United States

October Term, 1990

TRANSAMERICA OCCIDENTAL LIFE INSURANCE COMPANY,

Petitioner,

vs.

LEONARD M. KOIRE,

Respondent.

Petition For Writ Of Certiorari To The Court Of Appeal Of California, Second Appellate District

REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI AND SUPPLEMENTAL BRIEF

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TABLE OF CONTENTS

Page

INTRODUCTION 1

I. THIS COURT SHOULD, AS IT HAS IN FOUR OTHER CALIFORNIA CASES, VACATE THE PUNITIVE DAMAGES JUDGMENT AND REMAND TO THE CALIFORNIA COURT OF APPEAL FOR RECONSIDERATION IN LIGHT OF *HASLIP* 1

II. AS THE EIGHTH CIRCUIT RECENTLY HELD, WHEN, AS HERE, THE TRIAL COURT HAS NOT EXPLAINED ITS REASONS FOR DENYING A POST-TRIAL CHALLENGE TO A PUNITIVE DAMAGE AWARD, REMAND TO THE TRIAL COURT FOR RECONSIDERATION IN LIGHT OF *HASLIP* IS NECESSARY 2

III. RESPONDENT'S DEFENSE OF CALIFORNIA'S STANDARD OF JUDICIAL REVIEW OF PUNITIVE AWARDS BY JURIES IS UNCONVINCING 3

CONCLUSION 5

TABLE OF AUTHORITIES

Page

CASES

AMCA Intl. Finance Co. v. Hilgedick, 499 U.S. ___, 111 S.Ct. 1614 (1991) 1

Intercontinental Life Ins. Co. v. Lindblom, 499 U.S. ___, 111 S.Ct. 1575 (1991) 2

Jackson v. Virginia, 443 U.S. 307 (1979) 4

Pacific Mut. Life Ins. Co. v. Haslip, 499 U.S. ___, 111 S.Ct. 1032 (1991) 1, 3, 4

Robertson Oil Co. v. Phillips Petroleum Co., ___ F.2d ___, 1991 W.L. 57349 (8th Cir. 1991) 2, 3

Southern Life & Health Ins. v. Turner, 499 U.S. ___, ___ S.Ct. ___, 59 U.S.L.W. 3638 (1991) 2

RULES

Supreme Court Rules, rule 15.6 1

Supreme Court Rules, rule 15.7 1

TRANSAMERICA v. KOIRE REPLY TO BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI AND SUPPLEMENTAL BRIEF

INTRODUCTION

Petitioner Transamerica Occidental Life Insurance Company submits this brief in reply to respondent's brief in opposition to the petition for writ of certiorari (Supreme Court Rules, rule 15.6) and as a supplement to the petition to bring new case authority to this Court's attention (Supreme Court Rules, rule 15.7).

I.

THIS COURT SHOULD, AS IT HAS IN FOUR OTHER CALIFORNIA CASES, VACATE THE PUNITIVE DAMAGES JUDGMENT AND REMAND TO THE CALIFORNIA COURT OF APPEAL FOR RECONSIDERATION IN LIGHT OF *HASLIP*.

In our petition, we explained this case requires further analysis of the constitutionality of California's method for awarding punitive damages, as this Court found necessary in three other California cases. After the petition was filed, this Court granted certiorari in a fourth California case, vacated the judgment, and remanded for further consideration in light of *Pacific Mut. Life Ins. Co. v. Haslip*, 499 U.S. ___, 111 S. Ct. 1032 (1991).[1]

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[1] The fourth California case is *AMCA Intl. Finance Co. v. Hilgedick*, 499 U.S. ___, 111 S. Ct. 1614 (1991). In addition to the four California cases, this Court has made the same

(Continued on following page)

Respondent's primary answer is an attempt to distinguish these other cases because, he claims, "[i]n all the others, certiorari had already been granted [when the cases were remanded], while in this case it has not." Brief in Opposition, p. 2. Not so. In all ten of the cases remanded, certiorari had *not* already been granted but rather was granted at the same time remand was ordered. The same order is necessary here.

II.

AS THE EIGHTH CIRCUIT RECENTLY HELD, WHEN, AS HERE, THE TRIAL COURT HAS NOT EXPLAINED ITS REASONS FOR DENYING A POST-TRIAL CHALLENGE TO A PUNITIVE DAMAGE AWARD, REMAND TO THE TRIAL COURT FOR RECONSIDERATION IN LIGHT OF *HASLIP* IS NECESSARY.

After our certiorari petition was filed, the Eighth Circuit remanded a case for further consideration of the punitive damage award because the district court summarily denied a post-trial challenge to the award. *Robertson Oil Co. v. Phillips Petroleum Co.*, ___ F.2d ___, 1991 W.L. 57349 (8th Cir. 1991). As discussed in our petition, this is but one of the defects in the judicial review of the jury's punitive award in the present case.

(Continued from previous page)

order in six cases from other jurisdictions, the two most recent of which are *Southern Life & Health Ins. v. Turner*, 499 U.S. ___, ___ S. Ct. ___, 59 U.S.L.W. 3638 (1991) (remanded to Alabama Supreme Court) and *Intercontinental Life Ins. Co. v. Lindblom*, 499 U.S. ___, 111 S. Ct. 1575 (1991) (remanded to Alabama Supreme Court).

Recognizing the necessity of "evaluat[ing] . . . the adequacy of judicial review of the jury's award," *id.*, 1991 W.L. 57349 at 4, and noting the district court's summary denial rendered it "unable to evaluate the adequacy of the district court's review of the award," *id.*, 1991 W.L. 57349 at 5, the Eighth Circuit held, "In light of the intervening decision in *Haslip*, together with the Supreme Court's actions in remanding numerous cases for reconsideration in light of *Haslip*, we deem it advisable to remand for the district court to articulate its analysis under Arkansas law and to review the award under the criteria approved in *Haslip*, as well as principles enumerated in the Arkansas cases." *Id.*, citations and footnote omitted.

Here, as in *Robertson Oil*, the trial court denied without comment a post-trial challenge to the jury's punitive damage award. App., A-23. By contrast, as this Court noted favorably, an Alabama trial court must make a record of its reasons for not changing a jury's award. *Pacific Mut. Life Ins. Co. v. Haslip*, 499 U.S. at ___, 111 S. Ct. at 1044. Since it cannot be determined whether the trial court here did a constitutionally adequate review of the jury's punitive damage award (because of California's lax standards of judicial review, it probably did not), a remand is necessary.

III.

RESPONDENT'S DEFENSE OF CALIFORNIA'S STANDARD OF JUDICIAL REVIEW OF PUNITIVE AWARDS BY JURIES IS UNCONVINCING.

California's system for awarding punitive damages requires far less judicial scrutiny of jury punitive awards than does the Alabama system approved by this Court in

Haslip. Respondent attempts to brush these substantial differences aside by all but ignoring them and discussing other matters. However, constitutional infirmities do not disappear by turning a blind eye to them.

Respondent stresses that California juries must apply the "clear and convincing evidence" standard of proof in making those awards. Brief in Opposition, at 4. The focus in this case, however, is not on California *juries*, but rather on how California *courts* scrutinize those juries' awards.

The benefits of a heightened standard of proof are illusory if there is no meaningful judicial review to insure juries properly apply that standard. That was this Court's holding in *Jackson v. Virginia*, 443 U.S. 307, 316-17 (1979), where it was stated that the necessity that guilt be proved beyond a reasonable doubt "requires more than simply a trial ritual" of so instructing the jury; it "also require[s] that the factfinder will rationally apply that standard to the facts in evidence." (Footnote omitted.) As explained in the petition, the highly deferential standard of judicial review in California does not provide constitutionally sufficient protection from "punitive damages that 'run wild,' " *Haslip*, 499 U.S. at ___, 111 S. Ct. at 1043.

CONCLUSION

For the foregoing reasons, and those stated in the certiorari petition, certiorari should be granted.

Respectfully submitted,

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